

**SUBCHAPTER D: BENEFICIAL REUSE CREDIT**  
**§§309.21 - 309.25**  
**Effective January 9, 2020**

**§309.21. Purpose, Scope, and Applicability.**

(a) This subchapter provides for a beneficial reuse credit that may be used to account for beneficial reuse of treated wastewater for land application calculations. This subchapter establishes requirements for obtaining a beneficial reuse credit and requirements that apply to an entity who holds a permit that includes a beneficial reuse credit.

(b) This subchapter applies to an entity who applies for a Texas Land Application Permit (TLAP) under Chapter 305 of this title (relating to Consolidated Permits) to dispose of domestic wastewater if the application proposes a beneficial reuse credit. This subchapter also applies to an entity who holds a TLAP that includes a beneficial reuse credit.

(c) This subchapter does not apply to:

(1) domestic wastewater treatment facilities permitted to discharge to water in the state under a Texas Pollutant Discharge Elimination System permit issued under Chapter 305 of this title; and

(2) industrial facilities.

(d) This subchapter does not allow an entity to discharge wastewater or reclaimed water into water in the state. For the purpose of this subchapter, a discharge from a user's pond or storage unit that is a direct result of a rainfall event is considered an unauthorized discharge. A permit issued that includes a beneficial reuse credit in accordance with this subchapter does not protect an entity from liability for unauthorized discharges.

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**§309.22. Definitions.**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Beneficial reuse credit--The amount by which the permitted flow can be reduced to calculate the required land application area for a Texas Land Application Permit.

(2) Firm reclaimed water demand--The amount of water that has been historically used by the permittee or water user for beneficial reuse.

(3) Reclaimed water--As defined in Chapter 210 of this title (relating to Use of Reclaimed Water).

(4) Total monthly volume--The sum of all water use data across users of the same type of water use (i.e. indoor use or outdoor use) for the same month.

(5) Total nitrogen--Nitrate-nitrogen plus ammonia-nitrogen plus organically bound nitrogen.

(6) User--As defined in Chapter 210 of this title (relating to Use of Reclaimed Water).

(7) Water use data--Recorded monthly amounts of water for uses allowed in a reclaimed water use authorization issued under Chapter 210 of this title (relating to Use of Reclaimed Water). Water use data may include the amount of potable water used if the user has a contractual agreement with the permittee to substitute reclaimed water for potable water for the same type of use indicated.

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### **§309.23. Demonstrating Firm Reclaimed Water Demand.**

(a) The applicant shall submit five years or more of consecutive water use data for each user, if available. If five years of data is not available, the applicant shall submit a minimum of two consecutive years of water use data for each user to demonstrate firm reclaimed water demand. Water use data must be from the period immediately preceding the date the application is received.

(b) The applicant shall submit the total monthly volume of water used by users satisfying subsection (a) of this section for indoor use and outdoor use, respectively.

(c) Water use data can be for reuse conducted by either the applicant or reclaimed water users that have a contract with the applicant to reuse the applicant's reclaimed water. The contract must be for a minimum term of five years.

(d) Water use data must be for the same type of reclaimed water use proposed (for example, a user's landscape irrigation data may not be used to support the user's dust control or toilet flushing use).

(e) For each user, water use data must include:

- (1) the amount of water used on a monthly basis;
- (2) the type of use of the water at each site; and
- (3) the number of acres irrigated at each site, if applicable.

(f) At the discretion of the executive director, a water user's data may not be counted toward the beneficial reuse credit if the executive director determines that the user's water data is unreliable due to the user's noncompliance with state laws, rules, or permit conditions within the five-year period immediately preceding the date the application is received.

(g) At the discretion of the executive director, an applicant may not be eligible for beneficial reuse credit if the applicant has been issued a violation that resulted in an enforcement case within the five-year period immediately preceding the date the application is received.

(h) At the discretion of the executive director, less than two years of water use data may be used to calculate the beneficial reuse credit.

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#### **§309.24. Calculating and Using Beneficial Reuse Credit.**

(a) For outdoor uses.

(1) For users with less than five years of water use data, the beneficial reuse credit is calculated as 80% of the lowest total monthly volume of water used.

(2) For users with five or more years of water use data, the beneficial reuse credit is calculated as 80% of the average of the three lowest total monthly volumes of water use data submitted for the five years prior to the date the application is submitted. All users must have at least five consecutive years of data when taking the average of the lowest three months.

(b) For indoor uses.

(1) For users with less than five years of water use data, the beneficial reuse credit is calculated as 100% of the lowest total monthly volume of water used.

(2) For users with five or more years of water use data, the beneficial reuse credit is calculated as 100% of the average of the lowest three total monthly volumes of water use data submitted for the five years prior to the date the application is submitted. All users must have at least five consecutive years of data when taking the average of the lowest three months.

(c) When calculating the hydraulic application rate as described in §309.20(b)(3)(A) of this title (relating to Land Application of Sewage Effluent) or §222.83 of this title (relating to Hydraulic Application Rate) for subsurface area drip dispersal systems, the permitted flow may be reduced by the beneficial reuse credit.

(d) The size of the land application site area may not be reduced by more than 50% of the size required when calculating the hydraulic application rate using the permitted flow without the beneficial reuse credit.

(e) When calculating the required effluent storage as described in §309.20(b)(3)(B) of this title or §222.127 of this title (relating to Storage), the permitted flow may not be reduced by the beneficial reuse credit.

(f) For the purpose of recalculating the beneficial reuse credit and for renewing a permit, the executive director may accept water use data from users with less than two years of data on a case-by-case basis.

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### **§309.25. Requirements.**

#### **(a) Application Requirements.**

(1) The applicant must provide the executive director with a list of users and the type of use(s) for each user. For users that propose to use the reclaimed water for irrigation, the list must include the acreage and crop(s) irrigated for each irrigation area.

(2) The applicant must provide the executive director with a map showing the location of the water use sites at a scale specified by the executive director.

(3) The applicant must submit all water use data used to calculate firm reclaimed water demand.

(4) The executive director may request additional information as may be necessary for an adequate technical review of the application.

(5) For permits issued prior to the effective date of this subchapter, the permittee must apply for a permit amendment under Chapter 305 of this title (relating to Consolidated Permits) for approval of a new or approval of a change to an existing beneficial reuse credit.

(b) General Requirements.

(1) An applicant must receive authorization required by Chapter 210 of this title (relating to Use of Reclaimed Water) before applying for a beneficial reuse credit. The executive director may waive this requirement for a new facility if the executive director finds that the application contains all information required by §309.23 of this title (relating to Demonstrating Firm Reclaimed Water Demand). If a beneficial reuse credit is granted for a new facility, the permit must include:

(A) the requirements and conditions that apply to the regulated activity without considering the beneficial reuse credit, applicable from the date of permit issuance until the permittee receives authorization for reclaimed water use under Chapter 210 of this title; and

(B) the requirements and conditions that apply after the permittee receives authorization for reclaimed water use under Chapter 210 of this title.

(2) A permittee and, to extent applicable, a user must maintain authorization under Chapter 210 of this title during the term of the Texas Land Application Permit.

(3) The term of a permit that includes a beneficial reuse credit may not exceed five years.

(4) A permit that includes a beneficial reuse credit must include limits for both the permitted flow and the land application flow. The land application flow limit must be equal to the permitted flow limit minus the beneficial reuse credit.

(5) A permittee that is granted a beneficial reuse credit shall have a contractual agreement to dispose of unused treated effluent on an emergency basis, using the pump-and-haul method or another method approved by the

executive director. The permittee shall use the contracted disposal method if all of the following conditions are met:

(A) a user of reclaimed water no longer needs the reclaimed water;

(B) a new user has not been contracted to accept the reclaimed water;

(C) the permitted facility does not have adequate capacity to store the unused reclaimed water; and

(D) additional application to the permitted land application area would exceed the permitted application rate or is otherwise prohibited by the permit.

(6) A permittee that is granted a beneficial reuse credit must meet a minimum of Type II effluent quality as described in §210.33 of this title (relating to Quality Standards for Using Reclaimed Water).

(c) Reporting Requirements.

(1) If the users or the irrigation areas change, the permittee must provide the executive director with an updated list of users and irrigations areas within 30 days after the change. A change in user or area is not an amendment to the permit.

(2) A permittee that is granted a beneficial reuse credit shall submit the following to the executive director by September 30th of each year for the reporting period of September 1st to August 31st:

(A) monthly data on the amount of reclaimed water used by each user;

(B) the type of water use(s) for each user;

(C) the acreage of each irrigation site, if applicable;

(D) the crop(s) irrigated at each irrigation site, if applicable;

(E) a recalculation of the beneficial reuse credit; and

(F) the total nitrogen concentration of the effluent.

(3) If the recalculated beneficial reuse credit submitted in the annual report is reduced, the executive director may require a permit amendment.

(4) The total nitrogen concentration of the effluent shall be tested quarterly by grab sample for the first year of the permit term, after which the frequency for testing may be reduced to annually upon approval by the executive director.

(5) The permittee shall submit monthly effluent reports to the executive director in accordance with the effluent limitations and monitoring requirements of the permit.

(6) The executive director may require additional limitations or more frequent testing on a case-by-case basis.

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